Supreme Court, U.S.
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No. 00-1414

In The

Supreme Court of the United States

JOHN MICHAEL SCHAEFER,

Petitioner,

v.

DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY, State of Nevada, RICHARD T. KIRKLAND, Director,

Respondent.

On Petition For A Writ Of Certiorari To The Nevada Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the State of Nevada, Department of Motor Vehicles and Public Safety ("DMV/PS") may require an applicant for a driver's license or vehicle registration to provide a residence address?

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STATEMENT

Respondent Richard T. Kirkland ("KIRKLAND") is substantially satisfied with the "Statement" set forth by Petitioner John Michael Schaefer ("SCHAEFER").

With respect to the proceedings in the federal court, SCHAEFER has failed to accurately represent the court's ruling. The United States District Court, Case Number CV-S-95-826-LDG (LRL), entered its Order dismissing the matter on September 17, 1996, noting that SCHAEFER initiated the action without filing a proper complaint and further noting other abuses of the Federal Rules of Civil Procedure. (App. at A-1 to A-4).

REASONS FOR DENYING THE PETITION

This Petition should be denied as there are no compelling reasons to support issuance of the Writ. First, while the Nevada Supreme Court may have ruled on an important federal issue, whether the right to privacy includes a fundamental right to the privacy of one's residence address, the Nevada Supreme Court's ruling on this issue was not in conflict with relevant decisions of this Court. *Whalen v. Roe*, 429 U.S. 589 (1977).

Second, assuming *arguendo*, that there exists a fundamental right to the privacy of one's residence address, the Nevada Supreme Court's ruling that legislation may limit an individual's privacy right if it is necessary to advance a compelling state interest and is narrowly tailored to

advance that interest does not conflict with further relevant decisions of this Court. *Roe v. Wade,* 410 U.S. 113 (1973).

SUMMARY OF ARGUMENT

The Nevada Supreme Court properly concluded that the State may require an applicant for a driver's license or vehicle registration to provide a residence address. The statutes at issue serve a legitimate and compelling state interest. The information contained in the DMV/PS records is relied upon by law enforcement and it is imperative that such records contain accurate and reliable information. There simply is no legal basis to consider this matter further. The Petition should be denied.

ARGUMENT

THE NEVADA SUPREME COURT PROPERLY RULED THAT SECTIONS 482.215(3) AND 483.290(1) OF THE NEVADA REVISED STATUTES ARE CONSTITUTIONAL

A. The Right Of Privacy Does Not Protect Against Disclosure Of One's Residence Address

While the Constitution does not explicitly provide for the right of privacy, this Court recognized:

> that one aspect of the "liberty" protected by the Due Process Clause of the Fourteenth Amendment is a "right of personal privacy, or a guarantee of certain areas or zones of privacy." Roe v. Wade, 410 U.S. 113, 152 (1973). This right of

> personal privacy includes "the interest in independence in making certain kinds of important decisions." Whalen v. Roe, 429 U.S. 589, 599-600 (1977). While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions "relating to marriage, Loving v. Virginia, 388 U.S. 1, 12 (1967); procreation, Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541-542 (1942); contraception, Eisenstadt v. Baird, 405 U.S., at 453-454; id., at 460, 463-465 (White, J., concurring in result) family relationships, Prince v. Massachusetts, 321 U.S. 158, 166 (1944); and child rearing and education, Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925); Meyer v. Nebraska, [262 U.S. 390, 399 (1923)]." Roe v. Wade, supra, at 152-153. See also Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-640 (1974).

Carey v. Population Services Int'l, 431 U.S. 678, 684-85 (1977). The concept of personal liberty protects against governmental intrusion into only the most intimate of personal affairs. *Id.* This Court held that a New York statute which required that records be kept of all prescriptions for controlled substances did not violate privacy rights as the law established adequate measures to protect individual privacy. *Whalen v. Roe*, 429 U.S. at 600.

The Nevada Legislature, too, has chosen to safeguard and protect the privacy of those individuals who choose not to permit the release of personal information from

records held by the DMV/PS.[1] There are additional protections in the statute wherein the director may further restrict access to DMV/PS records.[2] The Nevada Supreme Court properly relied on *Whalen* in determining that the statutes at issue were constitutionally valid.

B. State Law May Limit An Individual's Fundamental Right In Order To Promote A Compelling State Interest.

Assuming *arguendo* that there is a fundamental right to the privacy of one's residence address, state law may limit an individual's right to privacy if it is necessary to promote a compelling state interest and it is narrowly tailored to promote that interest. *See, Roe v. Wade,* 410 U.S. at 155-56.

The Nevada Supreme Court properly concluded that the State has a compelling interest in having accurate and

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[1] NEV. REV. STAT. § 481.063(5)(k). In the bulk distribution of surveys, marketing material or solicitations, if the director has adopted policies and procedures to ensure that: (1) The information will be used or sold only for use in the bulk distribution of surveys, marketing material or solicitations; (2) Each person about whom the information is requested has clearly been provided with an opportunity to prohibit such a use; and (3) If the person about whom the information is requested prohibits in a timely manner such a use, the bulk distribution will not be directed toward that person.

[2] NEV. REV. STAT. § 481.063(7). Except as otherwise provided in subsection 2, the director may deny any use of the files and records if he reasonably believes that the information taken may be used for an unwarranted invasion of a particular person's privacy.

reliable DMV/PS records which are not only relied upon by DMV/PS for administrative purposes but for law enforcement purposes as well. DMV/PS relies on these records, in part, to notify an individual that his driver's license or vehicle registration is due for renewal. Law enforcement further relies on these records, for example, to notify family that a loved one has been killed or injured.

CONCLUSION

SCHAEFER's claim of unconstitutionality is not founded in law. He cites no authority to support his contention that the statutes at issue infringe upon a constitutionally protected privacy interest. SCHAEFER's Petition is facially deficient in that he has failed to set forth any argument to support his Petition and should further be rejected as it does not comply with this Court's rules.

The Nevada Supreme Court's decision is consistent with the decisions on point issued by the Court. Accordingly, the Petition should be denied.

Respectfully submitted,

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April, 2001

APPENDIX A

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOHN MICHAEL SCHAEFER, Petitioner, v. JAMES P. WELLER, et al., Respondents.	)	Case No. CV-S-95-826-LDG (LRL) **ORDER**

The following matters are before the court:

Petitioner's Withdrawal of his Motion to Dismiss (# 18);

Petitioner's Motion for Leave to File Second Amended Complaint for Preliminary Injunction (# 18);

Petitioner's Application for Order granting the withdrawal of his motion to dismiss and leave to file the second amended complaint (# 19);

Respondents' Motion for Sanctions (# 21);

Petitioner's Cross-motion for Sanctions (# 22);

Petitioner's Request for Judicial Notice (# 24); and

Petitioner's Motion for Summary Judgment (# 26).

The court recited the procedural history of this in its Order of December 14, 1995 (Docket # 17). Most importantly, this court noted that Petitioner had initiated this

action without filing a proper complaint.[1] The court had denied the original petition for preliminary injunction, and denied a subsequent motion seeking the identical relief requested in the original petition. The court further noted several of Petitioner's other abuses of the Federal Rules of Civil Procedure.

Nevertheless, the court provided Petitioner an opportunity to re-commence this action on a proper footing with an appropriate complaint. Without knowledge of the Court's order, Petitioner filed a motion for leave to file a proposed "Second Amended Complaint for Preliminary Injunction."[2] The proposed complaint fails to correct the deficiency of this action: the lack of a proper complaint seeking appropriate relief. This court twice denied Petitioner's requests for preliminary relief. As recited by its caption, however, the proposed amended complaint again seeks the preliminary relief.

The proposed complaint for preliminary injunction is nearly identical to the initial petition that this court previously denied. Petitioner merely copied his initial petition,

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[1] The court is dismayed at the poor quality of Petitioner's papers. The court initially treated the petition for preliminary injunction as a complaint because the quality of the pleadings and papers filed by Petitioner suggested he lacked any training in the law. Unfortunately, Petitioner is a long-standing member of the Nevada Bar.

[2] Although Petitioner captions the proposed pleading as a Second Amended Complaint, the record fails to disclose that Petitioner filed either a Complaint or an Amended Complaint. Rather, the only "complaint" filed by Petitioner was a "Third-party Complaint" that the court struck as improper.

crudely crossed out certain phrases and his copied signature with a black marker, and re-signed the petition. Although Petitioner received the Court's order, he chose to rely upon the re-signed and re-filed original petition that this court had already denied and chose not to file an appropriate complaint. As could be expected, rather than clearing up the confusion created by Petitioner's improper pleadings and papers, his decision to not file an appropriate complaint resulted only in greater confusion. Respondents, understandably, refused to respond to Petitioner's motion for summary judgment, asserting that Petitioner failed to file an appropriate complaint as required by this court's order. Plainly, the only manner by which the confusion can be resolved and this matter can be set on a proper footing is to dismiss this action without prejudice. This will require Petitioner to file and serve an appropriate complaint. In so doing, the Court warns Petitioner to pay careful attention to all Federal Rules of Civil procedure. Petitioner is not a layman and must abide by the stricter standards required of all attorneys practicing before this court.

Accordingly,

IT IS **ORDERED** that Petitioner's Motion for Leave to File Second Amended Complaint for Preliminary Injunction (# 18) is DENIED;

IT IS FURTHER **ORDERED** that this matter is DISMISSED without prejudice;

IT IS **ORDERED** that Petitioner's Withdrawal of his Motion to Dismiss (# 18) is DENIED as moot;

IT IS FURTHER **ORDERED** Petitioner's Application for Order granting the withdrawal of his motion to dismiss and leave to file the second amended complaint (# 19) is DENIED as moot;

IT IS FURTHER **ORDERED** that Respondents' Motion for Sanctions (# 21) is DENIED;

IT IS FURTHER **ORDERED** that Petitioner's Cross-motion for Sanctions (# 22) is DENIED;

IT IS FURTHER **ORDERED** that Petitioner's Request for Judicial Notice (# 24) is DENIED as moot; and

IT IS FURTHER **ORDERED** that Petitioner's Motion for Summary Judgment (# 26) is DENIED as moot.

DATED this 16th day of September, 1996.

/s/ Lloyd D. George
Chief United States District Judge